

United States District Court
For the Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

GABRIEL TELLES and MIGUEL ANGEL
LOPEZ SANTIAGO,

Plaintiffs,

v.

SU JUAN LI d/b/a MA'S RESTAURANT;
LAVENDER INVESTMENT, INC. d/b/a MA'S
RESTAURANT; YURONG LIANG d/b/a MA'S
RESTAURANT; GOLDEN CREEK
INVESTMENT, INC.; MA'S RESTAURANT,

Defendants.

Case No.: 11-CV-01470-LHK

ORDER DENYING PLAINTIFFS'
MOTIONS FOR DEFAULT JUDGMENT
WITHOUT PREJUDICE

Plaintiffs Gabriel Telles and Miguel Angel Lopez Santiago (collectively, "Plaintiffs") bring this action against Defendants Su Juan Li d/b/a Ma's Restaurant; Lavendar Investment, Inc. d/b/a Maf's Restaurant; Yurong Liang d/b/a Ma's Restaurant; Golden Creek Investment, Inc.; and Ma's Restaurant (collectively, "Defendants") seeking damages arising from Defendants' failure to pay overtime as required by the Fair Labor Standards Act and the California Labor Code. Plaintiffs allege that Defendants failed to compensate Plaintiffs, who are Defendants' former employees, for overtime wages and failed to provide adequate pay statements.

Plaintiff Telles filed this action on March 25, 2011, against Defendants Su Juan Li and Lavender Investment, Inc. d/b/a Ma's Restaurant. ECF No. 1. On August 12, 2011, Plaintiff Telles amended the complaint to add Plaintiff Miguel Angel Lopez Santiago and Defendants

1 Yurong Liang; Golden Creek Investment, Inc.; and Ma's Restaurant. At Plaintiffs' request, default
2 was entered on December 9, 2011, against Defendants Su Juan Li d/b/a Ma's Restaurant; Lavendar
3 Investment, Inc. d/b/a Ma's Restaurant; Yurong Liang d/b/a Ma's Restaurant; and Golden Creek
4 Investment, Inc. Default was not requested or entered against Ma's Restaurant.

5 On May 23, 2012, Plaintiffs filed a Notice of Motion for Default Judgment and
6 Memorandum of Points and Authorities in Support Thereof against all Defendants ("Plaintiffs'
7 2012 Motion"). ECF No. 34. This Motion was originally before the Honorable Howard R. Lloyd,
8 and was subsequently transferred to the undersigned judge on May 30, 2012. On February 27,
9 2013, Defendants filed another Motion for Default Judgment against all Defendants ("Plaintiffs'
10 2013 Motion"). ECF No. 38. Pursuant to Civil Local Rule 7-1(b), the Court finds Plaintiffs' 2012
11 Motion and Plaintiffs' 2013 Motion (collectively, "Plaintiffs' Motions") appropriate for
12 determination without oral argument.

13 First, although Ma's Restaurant is listed in the case caption as a distinct Defendant, no entry
14 of default has been requested or entered against it. As a result, Plaintiffs' Motions against Ma's
15 Restaurant are DENIED without prejudice. Default must be requested and entered against Ma's
16 Restaurant before Plaintiffs may file another motion for default judgment against Ma's Restaurant.

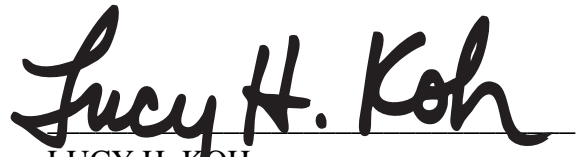
17 Plaintiffs' Motions against the other Defendants are DENIED with leave to amend for the
18 following reasons. First, Plaintiffs' 2013 Motion is erroneously captioned "C08-05755." This is
19 the docket number for another overtime compensation case, *Hidalgo v. Liu*, in which a different
20 plaintiff in a suit against different defendants was represented by Mr. James Dal Bon, Plaintiffs'
21 counsel in the instant case. That case was terminated on October 29, 2009.

22 Moreover, the contents of Plaintiffs' 2013 Motion differ materially and inexplicably from
23 Plaintiffs' 2012 Motion. For example, the calculation of attorney's fees in the declaration
24 accompanying Plaintiffs' 2013 Motion is lower than the calculation of attorney's fees in the
25 declaration accompanying Plaintiffs' 2012 Motion. In Plaintiffs' 2013 Motion, the estimate of
26 attorney's fees catalogues \$750 for a "Response to Order to Show Cause," although no Order to
27 Show Cause was issued in this case. Neither declaration corresponds to the amount claimed for
28 attorney's fees in the body of either of Plaintiffs' Motions.

1 Finally, Plaintiffs' Motions' allegations of Plaintiffs' hours worked do not correspond to the
2 declarations of the Plaintiffs, and Plaintiffs' Motions' calculations of damages include unexplained
3 averaging and rounding of numbers. Lastly, the only referenced evidence of Plaintiffs'
4 employment, other than their own declarations, is "a true and correct copy of a statement issued by
5 Ms. Su Juan Li in which she acknowledges cash payments." Decl. of Miguel Angel Lopez
6 Santiago, ECF No. 38, Attachment # 2. However, that document has not been submitted to the
7 Court, even though the declaration states that it is attached as "Exhibit A." *Id.* As a result of the
8 above, the Court lacks confidence in the accuracy of the numbers presented in Plaintiffs' Motions,
9 especially in light of the lack of supporting documentation for the substantive allegations.

10 Plaintiffs' Motions against Defendants Su Juan Li d/b/a Ma's Restaurant; Lavendar
11 Investment, Inc. d/b/a Ma's Restaurant; Yurong Liang d/b/a Ma's Restaurant; and Golden Creek
12 Investment, Inc. are DENIED with leave to amend within 30 days of this Order. In any amended
13 motion, Plaintiffs shall clarify the discrepancies in the previous numbers presented and clearly
14 explain all requested damages and attorney's fees in table form with an identification of the source
15 of each number and the method of each calculation. Plaintiffs shall also file all supporting
16 documentation.

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18 Dated: March 20, 2013

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20 LUCY H. KOH
21 United States District Judge
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